

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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TRANSCRIPT OF RECORD

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1933

391

No. 5982

HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
APPELLANT,

vs.

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, DEERWOOD, MINNESOTA, ASSIGNEE OF JAMES E. GIBBON, RECEIVER FOR THE NORTHERN MINNESOTA ORE COMPANY, A CORPORATION, APPELLEE

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JUNE 8, 1933

F.C.

Jan 15, 1934

COURT OF APPEALS, DISTRICT OF COLUMBIA

APRIL TERM, 1933

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA

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a Supreme Court of the District of Columbia

In equity no. 50418

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, DEER-
wood, Minnesota, Assignee of James E. Gibbon, Receiver for the
Northern Minnesota Ore Company, a Corporation, plaintiff

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR OF THE UNITED
States, defendant

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of
Columbia, at the city of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1 *Petition for review of decision of the Secretary of the
Interior*

Filed October 25, 1929

In the Supreme Court of the District of Columbia

In equity no. 50418

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, DEER-
wood, Minnesota, Assignee of James E. Gibbon, Receiver for the
Northern Minnesota Ore Company, a Corporation, plaintiff

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR OF THE UNITED
States, defendant

The Cuyuna Mining and Investment Company, a corporation, as-
signee of James E. Gibbon, receiver for the Northern Minnesota Ore
Company, a corporation, hereinafter styled plaintiff, respectfully
avers:

1. That the Northern Minnesota Ore Company was duly organized
a corporation on May 2, 1917, under the laws of the State of Minne-
sota, with its home office in Deerwood, Minnesota; that on Sep-
tember 2, 1927, James E. Gibbon was duly appointed receiver for
the Northern Minnesota Ore Company by the District Court, 15th
Judicial District of Minnesota; that by virtue of an order of said
court, dated October 30, 1928, the said James E. Gibbon, sold, trans-
ferred, assigned, and delivered to the Cuyuna Mining and Invest-
ment Company, a corporation, duly incorporated under the laws of
the State of Delaware with its principal office and place of business
at Deerwood, Minnesota, all the property, real and personal, rights
of action, and other assets belonging to the Northern Minnesota Ore
Company, which sale and assignment was on the 27th day of
2 December 1928 approved by said court, and in July 1929 the

said court ordered the discharge of the said James E. Gibbon as such receiver, the Northern Minnesota Ore Company having neither assets nor liabilities remaining; that the defendant is the Secretary of the Interior of the United States and is sued in his official capacity as Secretary of the Interior.

2. This suit is filed under the act of February 13, 1929 (Public, No. 728), to which reference is herewith respectfully made, for a review of, and in order to correct, errors of law committed by the different Secretaries of the Interior then in office in their consideration of the claim of the Northern Minnesota Ore Company filed with the Secretary of the Interior under the act of March 2, 1919 (40 Stat. 1272) and amendments thereof, for losses sustained in producing and preparing to produce manganese.

3. That defendant is, and his predecessors in office were, as Secretaries of the Interior, charged with the administration of the act of March 2, 1919, and its amendments.

4. That the property upon which the operations of the Northern Minnesota Ore Company were conducted, was known as the Northland Mine, a body of manganimiferous iron ore on the Cuyuna Range, Crow Wing County, Minnesota, and being described more particularly as follows: The S²NE⁴, S²NW⁴, N²NW⁴, section 20, township 47 N, range 28 W, 4th P.M.

After the organization and incorporation of the Northern Minnesota Ore Company and on May 12, 1917, and October 8, 1917, it purchased by assignment leases of said Northland Mine, which contained manganimiferous iron ore in commercial quantities, and thereupon began active operations to develop same for the purpose of producing manganese therefrom, and to that end it spent large sums of money in bona fide efforts to produce manganese ore from the land in question and sustained large losses in connection with the development of said property and in producing and preparing to produce manganese therefrom.

5. After the passage of the act of March 2, 1919, and within the time prescribed thereby, the Northern Minnesota Ore Company duly filed its claims thereunder with the Secretary of the Interior for net losses in the sum of \$198,818.66 sustained in producing and preparing to produce manganese from said property. Said claimant set forth in such claim as an element thereof losses sustained in connection with the purchase of leases and purchase of property upon which its said operations were conducted and all of which contained manganese in sufficient quantities to be of commercial importance in the sum of \$16,859.87, all of said leases and property being purchased as a result of the appeals, solicitations, requests and demands of the governmental agencies named in the act of March 2, 1919, as amended.

6. The Secretary of the Interior in the administration of said act appointed a board of commissioners to submit its recommendations as to the net losses sustained by said claimant and in due time said commissioners considered the claim filed by said claimant. On March 5, 1920, one of the members of said board of commissioners rendered a minority opinion recommending an award of \$59,645.12, in favor of said claimant, which said minority opinion was adopted by the Secretary of the Interior by his decision of May 20, 1921, and said sum of \$59,645.12 was awarded and paid to claimant.

7. After the passage of the amendatory act of November 23, 1921 (43 Stat. 322) said claimant filed an application for a reconsideration of its claim under the amendatory act. On February 20, 1923, Honorable Ira E. Robinson, the commissioner who superseded the former board of commissioners, submitted a recommendation to the Secretary of the Interior in which he recommended an award of \$47,072.70 in favor of said claimant. A copy of said recommendation is hereto attached, made a part hereof and marked "Exhibit A." The Secretary of the Interior used and adopted the recommendation of said commissioner and the said sum of \$47,072.70 was awarded and paid to claimant.

8. Plaintiff avers that in making such last-mentioned award the Secretary of the Interior used and adopted the findings of facts and conclusions of law made by said commissioner and the deductions subtracted from the claim made by such commissioner.

Plaintiff avers, as is more fully shown by the copy of the said commissioner's recommendation, that in his recommendation of an award in the sum of \$47,072.70, among other items not here in issue, the said commissioner made the following deductions:

Salary, C. W. Potts.....	\$3, 277. 75
Proportion travel expense ($\frac{1}{3}$).....	239. 57
Taxes.....	1, 610. 60
Minimum royalty.....	9, 964. 86
Recording and filing deed.....	21. 25
Purchase townsite property.....	1, 968. 75
Surveying " ".....	226. 00
Purchase of lease.....	188. 50
5 Stock-sales commission.....	\$35, 478. 11
Misc. financing and promoting.....	2, 736. 85
	38, 214. 96
Property purchased.....	1. 202. 62
Purchase of property.....	13, 500. 00
Interest.....	448. 26
Charge to prospecting period.....	10, 246. 75
Supplies on hand at armistice.....	20, 987. 12
Salvage on property.....	25, 000. 00
Insurance on Potts' life.....	2, 448. 75

No reason for making the above-mentioned deductions was given in the said commissioner's recommendation nor in the Secretary's decision rendering said award, but plaintiff avers that the said amounts were deducted because of rulings theretofore made by the Secretary of the Interior to the effect that the War Minerals Relief Act did not contemplate reimbursement for losses incurred in connection with the purchase of properties, leases, and mining rights nor sums paid or incurred for interest, taxes, royalties, surveying and recording fees, mining royalties, salaries, travel expense, stock-sales commission, and insurance, which said ruling had theretofore been followed and adhered to by the Secretary of the Interior in similar cases involving similar items.

Plaintiff therefore avers that the above-mentioned deductions were made because of the aforesaid rulings that such items were not, as a matter of law, allowable.

Under the aforesaid War Minerals Relief Act, as amended, plaintiff further avers that the Secretary of the Interior erred as a matter of law in making each and all of the above-mentioned deductions.

6 Plaintiff avers that the following deductions—supplies on hand at armistice, \$20,987.12; salvage on property, \$25,000.00—are both salvage deductions. That \$20,987.12, the full cost of the supplies on hand, was charged back against said claimant, who did not receive the benefit of any reduction for salvage; that \$25,000.00 was charged against said claimant on machinery and equipment, the admitted cost of which was \$59,151.52. That the above-mentioned salvage deductions were larger and greater than the Secretary of the Interior customarily made in similar cases. Plaintiff avers that the deduction of \$20,987.12, full cost of the supplies on hand, was incorrectly and erroneously made as a matter of law for the reason that it affirmatively was shown that the value thereof did not exceed the sum of \$3,000.00. Plaintiff further avers that the salvage deduction of \$25,000.00 on machinery and equipment, which cost \$59,151.52, was erroneously and incorrectly made as a matter of law for the reason that the salvage value of all the machinery and equipment on hand did not exceed \$11,851.61; and that the salvage value on supplies on hand at armistice, which cost \$20,987.12, would not exceed \$3,000.00, and that said claimant furnished affirmative evidence to this effect before the board of commissioners, and the Secretary of the Interior, and can still furnish evidence to this effect.

9. Plaintiff avers that the deduction for “salvage on property”, in the sum of \$25,000.00, was incorrectly and erroneously made as a matter of law for the reason that the undisputed evidence affirmatively showed that the salvage value of the property involved was only the sum of \$11,851.61, a difference between the amount
7 deducted for salvage and the amount which should have properly been deducted of \$13,148.39.

10. Plaintiff further avers that the said items of loss which were erroneously deducted as hereinbefore set forth were listed by said claimant as a portion of its claim and that by reason of the erroneous action of Commissioner Robinson and of the Secretary of the Interior in refusing to consider and by consequence disallowing the claim presented by said claimant for losses sustained in connection with said items, said claimant was prevented from showing the actual loss sustained in connection therewith and plaintiff avers that the sum of \$95,405.21, the total of said items, was a total loss and said claimant would have been able to submit evidence to substantiate such fact except for the erroneous ruling of the said commissioner and of the Secretary of the Interior.

11. In view of the foregoing, plaintiff avers that in the consideration of said claim the Secretary of the Interior committed errors of law in the following respects:

First. The Secretary of the Interior erred in holding and ruling in similar cases involving losses sustained in the purchase of property, leases, and mining rights; losses sustained by reason of the payment of taxes, travel expenses, royalties paid, fees for recording and filing deed, expense for surveying, stock-sales commission, and expenses such as financing and promoting, interest, prospecting, and insurance; that such losses were not reimbursable under the act of

March 2, 1919, and erred in applying such erroneous ruling in the instant claim and in deducting, ignoring, and refusing to consider the claim presented herein for losses sustained in connection with each of the items above enumerated.

8 Second. The Secretary of the Interior erred in holding and ruling that the sum of \$16,859.87, paid by said claimant for the mining leases, property, and townsite here in question was not a reimbursable loss within the contemplation of the act of March 2, 1919, and erred in disallowing the loss sustained by said claimant in respect of said sum.

Third. The Secretary of the Interior erred in holding and ruling that the item of \$3,277.75, paid as salary to C. W. Potts, the item of \$239.57 paid for travel expenses, the item of \$1,610.60 paid for taxes, the item of \$9,964.86 paid as royalties, the item of \$21.25 paid for recording and filing deeds, the item of \$226.00 paid for surveying, the item of \$38,814.95 paid for stock sales commission and expense for financing and promoting, the item of \$448.26 paid for interest, the item of \$10,246.75 paid for prospecting, the item of \$2,448.75 paid for insurance, were not reimbursable losses within the contemplation of the act of March 2, 1919, and erred in disallowing the loss sustained by said claimant in respect of said items.

Fourth. The Secretary of the Interior erred in holding and ruling that a deduction for salvage on property in the sum of \$25,000.00 should be made when the undisputed evidence showed that the proper salvage deduction should have been only the sum of \$11,851.61.

Fifth. The Secretary of the Interior erred in holding and ruling that a deduction for "supplies on hand at armistice" in the sum of \$20,987.12 should be made when the undisputed evidence showed that the proper salvage deduction should have been only the sum of \$3,000.00

12. Wherefore plaintiff prays the court:

9 First. That it review the final decision of the Secretary of the Interior upon the questions of law herein set forth which arose in the adjustment, liquidation, and payment of said claim under the War Mineral Relief Act, and that it correct the final decision of the Secretary of the Interior as to such questions of law.

Second. That it order and direct the clerk of this honorable court to certify without delay to the Secretary of the Interior the final judgment and decree rendered herein and to instruct the Secretary of the interior to proceed with the final adjustment of said claim in accordance with the judgment and decree of this court and to award to plaintiff the following sums:

Salary, C. W. Potts	\$3, 277. 75
Proportion travel expense ($\frac{1}{3}$)	239. 57
Taxes	1, 610. 60
Minimum royalty	9, 964. 86
Recording and filing deed	21. 25
Purchase townsite property	1, 968. 75
Surveying "	226. 00
Purchase of lease	188. 50
Stock sales commission and expenses	\$35, 478. 11
Misc. financing and promoting	2, 736. 85
	38, 214. 96

Property purchased.....	\$1,202.62
Purchase of property.....	13,500.00
Interest.....	448.26
Charge to prospecting period.....	10,246.73
Salvage on machinery and equipment deducted.....	\$25,000.00
Proper deduction.....	11,851.61
Excess salvage charge.....	13,148.39
Salvage on supplies on hand at Armistice deducted.....	20,987.12
10 Proper deduction.....	\$3,000.00
Excess salvage charge.....	17,987.12
Insurance on Patts life.....	2,448.74

the loss sustained by said claimant in connection with each of said items, and/or to award to plaintiff such sum in respect of each of said items as the Secretary of the Interior may find to be due to plaintiff.

Respectfully submitted.

CUYUN MINING AND INVESTMENT COMPANY.

Plaintiff.

By MANTON M. WYVELL, *Attorney for Plaintiff.*

STATE OF MINNESOTA, *County of Crow Wing, ss:*

James E. Gibbon, being duly sworn, deposes and states that he is the secretary-treasurer of the Cuyuna Mining and Investment Company, a corporation, and that he is duly authorized by said corporation to make this affidavit for and on behalf of said corporation; that he has read the foregoing petition and is familiar with the facts therein stated; that affiant verily believes the facts therein contained are true.

JAMES E. GIBBON.

Subscribed and sworn to before me this 22nd day of October, A. D. 1929.

(NOTARIAL SEAL)

F. W. SCHWANKE,

Notary Public, Crow Wing County, Minnesota.

Deerwood, Crow Wing County, Minn. My commission expires Dec. 15, 1934.

11

Exhibit A

DEPARTMENT OF THE INTERIOR

WAR MINERALS RELIEF,

Washington, February 20, 1923.

Memorandum in review of claim no. 1077, Northern Minnesota Ore Company, Deerwood, Minnesota.

The former commission fixed the date of stimulation as of April 1, 1918, and recommended an award of \$59,645.12.

Claimant now alleges an earlier date of stimulation; asserts that salvage was too high; asks for a salary for the president of the company, who was a stockholder, and wants an allowance for financing and for the purchase of property.

On review of the record the earlier date of stimulation is conceded, the salary of the president is reduced to a subsistence allow-

ance, and expenditures for financing and purchase of property are denied. This leaves for consideration, in so far as claimant's contentions are concerned, the question of salvage, and the net loss incurred from the new date of stimulation (September 8, 1917) to April 1, 1918, the date upon which the former award was based.

But because the former commission excluded from consideration certain expenditures, apparently for the reason the auditor had omitted them, it is found impractical merely to find the loss in the new stimulate period, and to examine the alleged errors in the former commission's work. There would be difficulty also in
12 correctly apportioning the expenditures and receipts to the two periods, and so the auditor has recast the entire claim, and it is here considered as a whole.

While an earlier date of stimulation than that fixed by the former commission is conceded, examiners raise the question whether claimant immediately thereafter responded in a degree which would entitle him to the benefits of the act. This doubt is due almost entirely to the statement of C. W. Potts, general manager and also a stockholder in the early stage of the claim, when he was describing the activities of the spring of 1918. His subsequent statements, and the record of expenditures set out by the present auditor, which latter shows the date, character and cost of the early operations, and conclusive that the effect of the published appeals was to lead claimant to make expenditures which otherwise he might not have made. Some of the expenditures, however, plainly were for prospecting or testing property, and for other purposes not accepted as reimbursable, and these will be deducted.

The present auditor finds the total expenditures for the entire operation to be \$234,591.64. As adjusted in this review, the claim appears as follows:

Expenditures		\$234, 591.64
Subsistence for C. W. Potts in lieu of salary, 425 days at \$4.00		1. 700. 00
Deductions:		
Salary C. W. Potts	\$3, 277. 75	
Proportion travel expense (1/3)	239. 57	
Taxes	1, 610. 60	
Minimum royalty	9, 964. 86	
Recording and filing deed	21. 25	
13 Purchasing townsite property	226. 00	
Surveying	226. 00	
Purchase of lease	188. 50	
Stock sales commission and expenses	35, 478. 11	
Property purchased	1, 202. 62	
Misc. financing and promoting	2, 736. 85	
Technical books	28. 10	
Purchase of property	13, 500. 00	
Interest	448. 26	
Charge to prospecting period	10, 246. 73	
Supplies on hand at armistice	20, 987. 12	
Salvage on property	25, 000. 00	
Insurance on Pott's life	2, 448. 75	
		129, 573. 82
		106, 717. 82
Less first award		59, 645. 12
Net loss		47, 072.70

The deduction for prospecting represents drilling, digging test pits, expenses to the St. Paul office and salary of C. W. Potts. The amount is set out in detail by the auditor and practically agrees with the statement of Mr. Potts appearing in the auditor's report.

In the reaudit, it was discovered that the former commission had failed to include in the expenditures \$40,865.00 for supplies. The omission may have been due to the belief that all these supplies were consumed in the past armistice operations. The facts are there were on hand at the armistice supplies amounting to \$20,987.12, which were subsequently consumed. In this re-

14 view all the supplies have been admitted as expenditures, and the amount on hand at the armistice, is salvaged at its full cost because it was, later, consumed in claimant's private operations. In fixing salvage on the property, the supplies so salvaged of course have been excluded.

The deduction of \$25,000 as salvage for the property is made with the facts in mind that the property is still owned by claimant, that it has been well cared for and is in splendid condition, and that it has a value notwithstanding it is not being operated at the present moment. The former commission fixed the salvage at \$39,000. Claimant estimated the salvage at about \$35,000, but, having lost several hundred thousand dollars in its operation since that time, it is now alleged that not more than \$11,000 should be charged. It is true that the total salvage here deducted is about \$45,000.00 (\$25,000.00 on property and \$20,000.00 on supplies), but it also is true that the earlier date of stimulation added to the equipment expenditures, which are allowed, and supplies not heretofore included are admitted in this review. Holding that of the total expenditures of approximately \$235,000.00, at least \$100,000.00 represents equipment and property which should be salvaged, it will be seen that the \$25,000.00 here fixed is but twenty-five percent of the cost.

The deduction of the cost of insuring the life of Mr. Potts is made because the item is included in the total expenditures.

I recommend an award of \$47,072.70 to claimant.

IRA E. ROBINSON, *Commissioner*.

15

Answer of the defendant

Filed November 12, 1929

* * * * *

The defendant, Ray Lyman Wilbur, for answer to the petition in the above-entitled case says that the said petition should be dismissed for want of equity, and because it fails to state a cause of action.

The defendant says that the War Minerals Act of March 2, 1919, vested no interest in claimants who made application for relief under its terms which could pass by assignment—whether by act of parties or by operation of law—and that a transfer by the receiver of the Northern Minnesota Ore Company of all of its real and personal property, rights of action and other assets to the Cuyuna Mining and Investment Company, the petitioner in this suit, did not

invest the said Cuyuna Mining and Investment Company with authority, power, or right, to maintain a suit against the Secretary of the Interior by reason of the rejection of certain items of the War Minerals claim which had been filed by the Northern Minnesota Ore Company.

The defendant says that under the provisions of the said act of March 2, 1919, the United States occupied the position of a benefactor, and not that of a debtor at law, and that the provisions of the said act of March 2, 1919, bestowed only a gratuity upon such individuals, firms, and corporations as came within the purview of the act, and that such gratuity was personal in its nature and could not be assigned.

16 The defendant says that the act of February 13, 1929, pursuant to which this suit purports have been filed, limits the right to institute a suit under its terms to claimants who heretofore have filed claims with the Secretary of the Interior under the War Minerals Act, and confers no right of action upon an assignee of such a claim.

The defendant says that the petitioner, Cuyuna Mining and Investment Company, filed no such claim and that, therefore, it is not entitled to maintain a suit under the terms of the said act of February 13, 1929.

The defendant asks the same benefit of this defense as though it had been raised by demurrer or plea to the petition.

1. Answering the first numbered paragraph of the petition, the defendant says that he admits that he now holds office as the Secretary of the Department of the Interior and that this suit is brought against him in his official capacity as Secretary of the Interior.

The defendant has no knowledge regarding the other allegations of the first paragraph of the petition.

2. Answering the allegations of the second paragraph of the petition the defendant denies that this suit is filed under the act of February 13, 1929, as therein alleged. The defendant says that by the express terms of that act a suit under its provisions must be brought by a claimant who heretofore filed with the Secretary of the Interior a claim under the War Minerals Acts, and that the act makes no provision for a suit by the assignee of such a claimant.

3. The defendant admits the allegations of the third paragraph of the petition.

4. The defendant admits the substance of the fourth paragraph of the petition.

17 The defendant says, however, that the leases of the Northland Mine were purchased for \$13,500, represented by \$500 in cash and \$13,000 in the capital stock of the Northern Minnesota Ore Company, and that they still were owned by the Northern Minnesota Ore Company at the time it filed its War Minerals claim hereinafter referred to.

5. Answering the allegations of the fifth paragraph of the petition the defendant says that he admits that on May 31, 1919, the Northern Minnesota Ore Company filed a claim pursuant to the act of March 2, 1919, which was designated as War Minerals claim no. 1077, wherein it claimed net losses in the sum of \$196,818.60.

He admits that there were items of the claim covering the purchase of leases and of land totaling \$16,859.87. He denies that the mining operations of the corporation were conducted upon all of the property so purchased, and that all of the property in question contained manganese in sufficient quantities to be of commercial importance.

He says that he has no knowledge as to the reason which prompted the purchase of the properties in question.

6. The defendant admits the substance of the allegations of the sixth paragraph of the petition.

7. The defendant admits the substance of the allegations of the seventh paragraph of the petition.

8. Answering the allegations of the eighth paragraph of the petition the defendant admits that the War Minerals Relief Commission in making its recommendation dated February 20, 1923, with respect to the War Minerals claim of the Northern Minnesota Ore Company, refused to recommend an allowance on account of the items set forth in the second subparagraph of paragraph 8, and that no allowance on account of the items in question was made to the claimant by the Secretary of the Interior.

18 The defendant says that the reason no allowance was made on account of said items was because of the fact that they did not represent items of loss which were compensable under the War Minerals Act of March 2, 1919.

The defendant denies that the Secretary of the Interior erred in disallowing any of the items in question.

The defendant says that the determination of the salvage value of the supplies which the Northern Minnesota Ore Company had on hand at the time of the armistice, and the determination of the salvage value of its property, involved questions of fact as to which the decision of the Secretary of the Interior was and is final and conclusive.

9. Answering the allegations of the ninth paragraph of the petition the defendant denies that the determination of the salvage value of the property of the Northern Minnesota Ore Company involved a question of law, or that any error of law was committed by the Secretary of the Interior with respect thereto.

10. The defendant denies the allegations of the tenth paragraph of the petition, except that he admits that the items of alleged loss referred to in that paragraph of the petition constituted a portion of the War Minerals claim of the Northern Minnesota Ore Company.

11. Answering the eleventh paragraph of the petition, the defendant denies that the Secretary of the Interior in considering and adjusting the War Minerals claim of the Northern Minnesota Ore Company committed the errors of law alleged in that paragraph of the petition.

Having answered fully all of the allegations of the plaintiff's petition, the defendant asks to be hence dismissed
19 with costs.

RAY LYMAN WILBUR.

DISTRICT OF COLUMBIA, ss:

Ray Lyman Wilbur, being first duly sworn, on his oath says that he has read the foregoing petition by him subscribed, and that the

statements made therein of his own knowledge are true, and those made upon information and belief he believes to be true.

RAY LYMAN WILBUR.

Subscribed and sworn to before me this 11th day of November, 1929.

(NOTARIAL SEAL)

W. BERTRAND ACKER,
Notary Public, D.C.

E. C. FINNEY,
Solicitor, Department of the Interior,
O. H. GRAVES,
Assistant to the Solicitor,
Attorneys for the defendant.

20

Memorandum opinion

Filed December 21, 1932

* * * * *

After the passage of the act of March 2, 1919 (40 Stat. 1272), the Northern Minnesota Ore Company filed its claim with the Secretary of the Interior in the sum of \$196,818.66 for losses claimed to have been sustained in producing and preparing to produce manganese upon certain property known as the Northland Mine, located in Crow Wing County, Minnesota. On account of this claim, the Secretary on May 20, 1921, awarded \$59,645.12, which was paid to the claimant. After the passage of the amendatory act of November 23, 1921 (42 Stat. 322), claimant filed an application for reconsideration of its claim, upon which the Secretary, on February 20, 1923, made an additional award of \$47,072.70, which was also paid to the claimant.

Thereafter, on September 2, 1927, a State court of Minnesota placed the Northern Minnesota Ore Company in the hands of a receiver, who, pursuant to decree of that court passed October 30, 1928, by conveyance of December 28, 1928, transferred and assigned to the plaintiff, the Cuyuna Mining and Investment Company, all of the property of the Northern Minnesota Ore Company,

"the intention being to convey to said second party all property, real and personal, rights of action and other assets of Northern Minnesota Ore Company, wherever situated and whether enumerated or otherwise referred to herein or not."

On October 25, 1929, the plaintiff, in pursuance of the act of February 13, 1929 (45 Stat. 1166), filed its petition herein to review the final decision of the Secretary.

21 As a defense to the petition, the Secretary in his answer sets out that the conveyance by the receiver of the Northern Minnesota Ore Company did not invest the plaintiff with any power or right to maintain suit against the Secretary of the Interior to review his decision in rejecting items of the claim which had been filed by the Northern Minnesota Ore Company.

The act of February 13, 1929, confers upon
 "any claimant who has heretofore filed with the Secretary of the Interior * * * a claim under said Acts generally known as the War Minerals Act "

the right to

"petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts."

The Secretary contends that this right is personal to the original claimant, and is not assignable by operation of law or otherwise, so as to enable any person other than the claimant to petition for such relief.

The question thus presented is resolved in favor of the right of the plaintiff to maintain this suit, on the authority of *Erwin v. U.S.*, 97 U.S. 392; *Western Pacific Railroad Co. v. U.S.*, 268 U.S. 271; and *U.S. ex rel. Parish v. Cortelyou*, 30 App. D.C. 45, 54. See also memoranda in *Baker v. Wilbur*, equity no. 50,764, and *Maltby v. Wilbur*, equity no. 51,025.

Among the items which the plaintiff alleges the Secretary erroneously refused to consider in determining net losses are the following:

1. Expenditures for purchase of property and leases.
2. Minimum royalty paid under lease.
3. Taxes.
- 22 4. Recording and filing deed.
5. Surveying.
6. Interest.

The action of the Secretary in refusing to take these items into consideration is alleged to have been taken in accordance with his previous rulings to the effect that the act did not contemplate consideration of losses incurred in connection with purchase of properties or leases, payment of royalties, interest, taxes, and recording and surveyor's fees; and the answer admits that the items were disallowed because not items of loss compensable under the act.

All of these items, 1 to 6, seem clearly within the spirit of the decisions in *U.S. ex rel. Vindicator Consolidated Gold Mining Co. v. Wilbur*, 284 U.S. 231, and *U.S. ex rel. Chestatee Pyrites & Chemical Corp. v. Wilbur*, 61 App. D.C. —, 60 W.L.R. 557; and are matters for the consideration of the Secretary in reaching his conclusion as to net losses, as explained and directed in the opinions in those cases.

Other items included among those which the plaintiff complains of as erroneously disallowed by the Secretary are:

a. Salary, C. W. Potts	\$3, 277. 75
b. Proportionate travel expenses ($\frac{1}{3}$)	239. 57
c. Stock sales, commissions and expenses, and miscellaneous financing and promoting	38, 214. 96
d. Charge to prospecting period	10, 246. 75
e. Insurance on Potts' life	2, 448. 75

Nothing appears in the record to show wherein the Secretary erred on any question of law involved in his disallowance of these items

23 as necessary expenditures in producing and preparing to produce manganese within the meaning of the act. See memoranda in *Green v. Wilbur*, equity no. 50,887, as to salaries and wages; *Southern Pyrites Ore Co. v. Wilbur*, equity no. 50,881, as to stock sales and promotion expenses; and *Stewart-Calvert Co. v. Wilbur*, equity no. 50,817, as to prospecting expenses.

The plaintiff also complains that the Secretary erred in determining the salvage value of certain property, viz. property on hand at the time of the armistice of the value of \$20,987.12, subsequently consumed in post-armistice operations; and property remaining in hands of claimant of the value of \$25,000. These salvage values were considered and determined by the Secretary as questions of fact (see memo of Commissioner Robinson, plaintiff's exhibit A), and no error of law is shown to be involved in his conclusions.

Decree in accordance with this memorandum may be settled on notice.

JOSEPH W. COX, *Justice*.

DECEMBER 21, 1932.

24

Decree

Filed January 13, 1933

* * * * *

The above cause came on to be heard before the court upon the petition and answer filed herein. On consideration thereof,

It is adjudged, ordered and decreed that the defendant, Ray Lyman Wilbur, Secretary of the Interior, is hereby authorized and directed to ascertain whether the Northern Minnesota Ore Company had incurred any net losses by reason of expenditures made for—

1. Expenditures for purchase of property and leases.
2. Minimum royalty paid under lease.
3. Taxes.
4. Recording and filing deed.
5. Surveying.
6. Interest.

as set forth in the War Minerals relief claim of Northern Minnesota Ore Company being claim no. 1077, and as alleged in the petition herein, and to proceed to the final adjustment of said claim, filed pursuant to the act of March 2, 1919, chapter 94, as amended, with the recognition of plaintiff as the owner of said claim, in accordance with the facts as determined by him, and in accordance with the interpretation of said act by the Supreme Court of the United States in decisions rendered December 7, 1931, in the cases of *Vindicator Consolidated Gold Mining Company v. Wilbur*, and *Chestatee Pyrites & Chemical Corporation v. Wilbur*, 284 U.S. 231.

It is also adjudged that no costs be awarded either party.

25 This 13 day of January, 1933.

JOSEPH W. COX, *Justice*.

From the foregoing decree the defendant notes in open court an appeal to the Court of Appeals and the same is hereby allowed, this 13th day of January, 1933.

JOSEPH W. COX, *Justice*.

Order of substitution and extending time to file record

Filed March 20, 1933

Court of Appeals of the District of Columbia

No. 2063, original. January term, 1933

Equity no. 50418

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER

vs.

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, Assignee of James E. Gibson, Receiver for the Northern Minnesota Ore Company, a Corporation

On consideration of the petition of Harold L. Ickes, Secretary of the Interior, to be substituted as party appellant in the above-entitled cause in the place and stead of Ray Lyman Wilbur, retired, and to extend the time for filing the record in this court until May 13, 1933,

It is ordered by the court that Harold L. Ickes, Secretary of the Interior, be, and he is hereby, substituted as party appellant in this cause in the place and stead of Ray Lyman Wilbur, retired, and that the time for filing the record in this court be, and it is hereby, extended until and including May 13, 1933.
per Mr. CHIEF JUSTICE MARTIN.

MARCH 18, 1933.

A true copy.

Test:

[SEAL]

HENRY W. HODGES,
Clerk, Court of Appeals, D.C.

Order further extending time to file record

Filed June 1, 1933

Court of Appeals of the District of Columbia

No. 2063, original. April term, 1933

Equity 50418

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER,

vs.

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, Assignee of James E. Gibbon, Receiver for the Northern Minnesota Ore Company, a Corporation.

On consideration of the petition for a further extension of time to and including June 12, 1933, within which to file the transcript of record in the above entitled cause in this court,

It is by the court this day ordered that said petition be and it is hereby granted and the time extended as prayed.

per Mr. CHIEF JUSTICE MARTIN.

MAY 11, 1933.

A true copy.

Test:

[SEAL]

HENRY W. HODGES,
Clerk, Court of Appeals, D.C.

27

Assignment of errors

Filed June 1, 1933

* * * * *

The defendant assigns the following errors:

1. The trial court erred in assuming jurisdiction of this case, which was instituted pursuant to the act of February 13, 1929, upon the petition of the Cuyuna Mining and Investment Company, and in pronouncing and signing the decree appealed from, because the said Cuyuna Mining and Investment Company did not file the War Minerals claim upon which its alleged cause of action was based, and, therefore, it was not authorized to institute a proceeding under the act of February 13, 1929.

2. The trial court erred in assuming jurisdiction of this case, and in pronouncing and signing the decree appealed from, because the alleged right of the Cuyuna Mining and Investment Company, upon which its suit was based, was derived through an alleged assignment to it of a gratuity created by the act of Congress of March 2, 1919, in favor of the Northern Minnesota Ore Company only.

3. The trial court erred in signing and entering the decree appealed from in this case, in favor of the Cuyuna Mining and Investment Company, Assignee of James E. Gibbon, receiver for the Northern Minnesota Ore Company, and adverse to the Secretary of the Interior, because rights arising under the War Minerals

28 Act of March 2, 1919, and its amendments, could not be assigned; and further, because a proceeding authorized by the act of February 13, 1929, only could be instituted by a claimant who theretofore had filed a claim under the acts of Congress generally known as the War Minerals acts.

NATHAN R. MARGOLD,
Solicitor, Interior Department.

CHARLES FAHY,
Assistant to the Solicitor.

VICTOR H. WALLACE,
Attorney.

29

Stipulation of counsel

Filed June 1, 1933

* * * * *

It is stipulated and agreed by and between Manton M. Wyvell and Clyde L. Rogers, attorneys for the Cuyuna Mining and Invest-

ment Company, and Nathan R. Margold and Charles Fahy, attorneys for Harold L. Ickes, Secretary of the Interior, that duly certified copies of the following papers were submitted in evidence in behalf of the Cuyuna Mining and Investment Company at the hearing of this cause before Justice Cox, and were duly considered by him. to wit: (1) An order dated September 2, 1927, by Judge Graham M. Torrance, presiding in the District Court, 15th Judicial District of the State of Minnesota, entered in the case of *Mraz v. Northern Minnesota Ore Company* appointing James E. Gibbon receiver of the assets of the Northern Minnesota Ore Company; (2) an order of sale by Judge Torrance in said cause, dated October 30, 1928; (3) an order by Judge Torrance in said cause, dated December 27, 1928, confirming the receiver's sale; (4) a bill of sale by the receiver, dated December 28, 1928; and (5) an order by Judge Torrance in said cause, dated July 5, 1929, discharging the receiver.

It is further stipulated and agreed that these papers were the only evidence submitted at the hearing of this cause by either side.

30 It is further stipulated and agreed that these papers, in the condensed form given below, shall constitute a part of the record on appeal in this case, and that they may be considered by the Court of Appeals with the same effect as though they were embodied in a formal statement of evidence in equity pursuant to law rule 46 of the Supreme Court of the District of Columbia and rule 5 of the Court of Appeals, and that this stipulation may be printed in the record as though it were a formal statement of evidence under the rules.

The five papers designated above read in substance as follows:

1. Order of Judge Torrance dated September 2, 1927.

It is ordered that James E. Gibbon, of Deerwood, Minnesota, be and he hereby is appointed receiver of the Northern Minnesota Ore Company, pursuant to and under the provisions of section 8013 of the General Statutes of Minnesota for 1923, in case no. 12805, *J. M. Mraz v. Northern Minnesota Ore Company*.

2. Order of sale of Judge Torrance, dated October 30, 1928.

The receiver, James E. Gibbon, hereby is directed to sell and dispose of all of the remaining assets of the defendant corporation, Northern Minnesota Ore Company, both real and personal, at public sale, at Deerwood, Minnesota, on November 24, 1928, to the highest and best bidder therefor, subject to the approval of the court.

3. Order of Judge Torrance confirming the receiver's sale, dated December 27, 1928.

The receiver, James E. Gibbon, having reported that he had made sale of the assets of the Northern Minnesota Ore Company, pursuant to the court's order of October 30, 1928, and that he had accepted the bid of the Cuyuna Mining and Investment Company in the sum of \$161,703.61, which was the highest and best and only bid, it is ordered that the sale be confirmed, and that the receiver execute

31 and deliver to the Cuyuna Mining and Investment Company a quitclaim deed covering and conveying all of the remaining real estate of the defendant corporation, and a bill of sale covering and delivering all of the remaining personal property of the defendant corporation, which bill of sale, without specifically de-

scribing such personal property of the defendant corporation, should include this clause:

"Also, all other property belonging to the Northern Minnesota Ore Company, the intention being to convey to said second party all property, rights of action, and other assets of the Northern Minnesota Ore Company, wherever situated and whether enumerated or otherwise referred to herein or not."

The quitclaim deed and bill of sale to be executed and delivered upon payment to the receiver of the sum of \$161,703.61.

4. Receiver's bill of sale, dated December 28, 1928.

James E. Gibbon, receiver, conveys to the Cuyuna Mining and Investment Company the bank accounts standing in the name of the receiver; accounts in the name of the Northern Minnesota Ore Company against certain persons; certain designated chattels and equipment; telephone lines; power machinery and equipment; property located in Arkansas; and "also all other property belonging to the Northern Minnesota Ore Company, the intention being to convey to said second party all property, real and personal, rights of action and other assets of the Northern Minnesota Ore Company, wherever situated and whether enumerated or otherwise referred to herein or not."

5. Order of Judge Torrance, dated July 5, 1929, discharging the receiver.

It is ordered that James E. Gibbon, receiver in the above-entitled cause, be and he is hereby discharged as such receiver; that his bond as such receiver, filed herein, be and the same is hereby released and the surety thereon be and the same is hereby discharged.

MANTON M. WYVELL,
CLYDE L. ROGERS,

Attorneys for the Cuyuna Mining and Investment Company.

NATHAN R. MARGOLD,
Solicitor, Department of Interior.

CHARLES FAHY,
Assistant to the Solicitor,
Attorneys for Harold L. Ickes, Secretary of the Interior.

Approved, June 1, 1933.

JOSEPH W. COX,
Justice.

32

Designation of the record on appeal

Filed June 1, 1933

* * * * *

1. Plaintiff's petition.
2. Defendant's answer.
3. Stipulation of counsel as to the statement of evidence.
4. Memorandum decision of Justice Cox dated December 21, 1932.
5. Final decree of Justice Cox dated January 13, 1933, with notation of appeal.

6. Order of the Court of Appeals extending time for filing transcript of record in that court to and including May 13, 1933, and substituting Harold L. Ickes, Secretary of the Interior, as the party defendant in the place and stead of Ray Lyman Wilbur.

7. Memorandum. Time for filing transcript of record further extended by the Court of Appeals until June 12, 1933.

8. Assignment of errors.

9. This designation of the record.

NATHAN R. MARGOLD,
Solicitor, Department of the Interior,

CHARLES FAHY,
Assistant to the Solicitor,

VICTOR H. WALLACE,
Attorney,

Attorneys for Harold L. Ickes, Secretary of the Interior.

The foregoing designation is satisfactory to the appellee.

MANTON M. WYVELL,
Attorney for Cuyuna Mining and Investment Company.

33 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 32, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause no. 50418 in equity, wherein Cuyuna Mining and Investment Company, a corporation, Deerwood, Minnesota, assignee of James E. Gibbon, receiver for the Northern Minnesota Ore Company, a corporation, is plaintiff and Ray Lyman Wilbur, Secretary of the Interior of the United States, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 7th day of June, 1933.

[SEAL]

FRANK E. CUNNINGHAM, *Clerk.*

B (Endorsement on cover:) District of Columbia Supreme Court. No. 5982. Harold L. Ickes, Secretary of the Interior, appellant, vs. Cuyuna Mining and Investment Company, a Corporation, &c. Court of Appeals District of Columbia. Filed June 8, 1933. Henry W. Hodges, clerk.

AUG 31 1933

No. 5982

Harry W. Rodgers

CLERK

In the Court of Appeals of the District of
Columbia

APRIL TERM, 1933

HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
APPELLANT

v.

CUYUNA MINING AND INVESTMENT COMPANY, A
CORPORATION, ASSIGNEE OF JAMES E. GIBBON, RE-
CEIVER FOR THE NORTHERN MINNESOTA ORE COM-
PANY, A CORPORATION, APPELLEE

BRIEF OF APPELLANT

NATHAN R. MARGOLD,
Solicitor, Interior Department.

CHARLES FAHY,
First Assistant Solicitor.

VICTOR H. WALLACE,
Attorney.

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In the Court of Appeals of the District of Columbia

APRIL TERM, 1933

No. 5982

HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
appellant

v.

CUYUNA MINING AND INVESTMENT COMPANY, A CORPORATION, assignee of James E. Gibbon, Receiver for the Northern Minnesota Ore Company, a corporation, appellee

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal by the Secretary of the Interior from a decree of the Supreme Court of the District of Columbia, entered on January 13, 1933, in Equity Cause No. 50418, entitled *Cuyuna Mining and Investment Company, a Corporation, Assignee of James E. Gibbon, Receiver for the Northern Minnesota Ore Company, a Corporation, v. Ray Lyman Wilbur, Secretary of the Interior.*

The plaintiff's alleged cause of action was based upon the act of February 13, 1929, which permitted suits to be instituted under its terms by "any claimant" who theretofore had filed a claim under the War Minerals Acts.

THE FACTS

A corporation, known as the Northern Minnesota Ore Company, was organized under the laws of Minnesota on May 2, 1917 (R. 1).

After the passage of the act of March 2, 1919, and pursuant to the terms of that act, the corporation filed a claim with the Secretary of the Interior, designated as War Minerals Claim No. 1077, wherein it claimed losses in the sum of \$196,818.66, said to have been sustained in producing and in preparing to produce manganese upon its property, known as the Northland Mine, located in Crow Wing County, Minnesota (R. 11).

The claim was considered and adjusted by the Secretary of the Interior, and an award in the sum of \$59,645.12 was made to the claimant on May 20, 1921. After the passage of the amendatory act of November 23, 1921, an additional award of \$47,072.70 was made under date of February 20, 1923. These awards, which totaled \$106,717.82, were duly paid to the claimant (R. 11).

There is nothing in the record to show that these awards were not satisfactory to the Northern Minnesota Ore Company, or that their payment did not effectuate a final settlement of its claim.

More than four years and six months after the date of the Secretary's last award, as above, on, to wit, September 2, 1927, James E. Gibbon was appointed receiver for the Northern Minnesota Ore Company by a State Court of Minnesota, known as District Court, Fifteenth Judicial District of Minnesota, in a suit instituted against that company by one J. M. Mraz (R. 1, 16).

Thereafter, pursuant to an order of court dated October 30, 1928, Gibbon, as receiver, sold at public sale, and transferred, assigned, and delivered to the Cuyuna Mining and Investment Company, a Delaware corporation, all property, real and personal, rights of action, and other assets belonging to the Northern Minnesota Ore Company, and executed a bill of sale, dated December 28, 1928, in favor of the purchaser, which contained the following statement: "the intention being to convey to the said second party all property, real and personal, rights of action, and other assets of the Northern Minnesota Ore Company, wherever situated and whether enumerated or otherwise referred to herein or not" (R. 17).

It will be observed that this bill of sale was executed prior to the passage of the act of February 13, 1929, pursuant to which this suit, Equity No. 50418, was filed, and that it was executed at a time when, according to the decision of the Supreme Court of the United States in the case of *Work, Secretary of the Interior, v. United States ex rel.*

Rives (267 U.S. 175), the Northern Minnesota Ore Company had no "legal claim" or "vested rights" against the Government, and at a time when in fact the property or assets transferred did not include, so far as the war minerals claim was concerned, any "property", "rights of action", or other "assets". Nor could the transferee have paid anything for such nonexistent "property", "rights of action", or "assets". They simply did not then exist, and therefore could not have been transferred.

Thereafter, on February 13, 1929, an act of Congress was approved which permitted "any claimant" who theretofore had filed a claim under the War Minerals Act of March 2, 1919, to petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which had arisen in the adjustment, liquidation, and payment of the petitioner's claim. No provision was made for a proceeding by an assignee, or by anyone other than a claimant.

The War Minerals claimant in this case, the Northern Minnesota Ore Company, apparently was satisfied with the awards and payments which already had been made, and considered its War Minerals Claim No. 1077 as finally settled and paid. It made no attempt to avail itself of the provisions of the act of February 13, 1929, and it never filed any proceeding under its terms, or made any request for further payment.

The Cuyuna Mining and Investment Company, the purchaser at the receiver's sale, did, however, on October 25, 1929, institute suit, Equity No. 50418, under the alleged authority of the act of February 13, 1929, wherein it prayed a review of the Secretary's final decision with respect to certain items of the War Minerals Claim No. 1077 of the Northern Minnesota Ore Company, and wherein it sought to compel the Secretary of the Interior to make an award to it of "such sum in respect of each of said items as the Secretary of the Interior may find to be due to plaintiff" (R. 1-6).

The Secretary answered the petition in part, as follows:

The defendant says that the act of February 13, 1929, pursuant to which this suit purports have been filed, limits the right to institute a suit under its terms to claimants who heretofore have filed claims with the Secretary of the Interior under the War Minerals Act, and confers no right of action upon an assignee of such a claim.

The defendant says that the petitioner, Cuyuna Mining and Investment Company, filed no such claim and that, therefore, it is not entitled to maintain a suit under the terms of the said act of February 13, 1929.

The defendant asks the same benefit of this defense as though it had been raised by demurrer or plea to the petition (R. 9).

Thereafter the case was heard before Justice Joseph W. Cox, who, on December 21, 1932, filed a

memorandum opinion in which he sustained the petitioner's alleged right of action (R. 11).

This memorandum was followed by a decree dated January 13, 1933, wherein the Secretary of the Interior was directed to ascertain whether or not the Northern Minnesota Ore Company had incurred any net losses by reason of certain expenditures, and thereupon to proceed to the final adjustment of its War Minerals Claim No. 1077 "with the recognition of plaintiff" (Cuyuna Mining and Investment Company) "as the owner of said claim" (R. 13).

The Secretary of the Interior thereupon appealed to this court (R. 13).

ASSIGNMENTS OF ERROR

The appellant assigns the following errors:

1. The trial court erred in assuming jurisdiction of this case, which was instituted pursuant to the act of February 13, 1929, upon the petition of the Cuyuna Mining and Investment Company, and in pronouncing and signing the decree appealed from, because the said Cuyuna Mining and Investment Company did not file the War Minerals claim upon which its alleged cause of action was based, and, therefore, it was not authorized to institute a proceeding under the act of February 13, 1929.

2. The trial court erred in assuming jurisdiction of this case, and in pronouncing and signing the decree appealed from, because the alleged right of

the Cuyuna Mining and Investment Company, upon which its suit was based, was derived through an alleged assignment to it of a gratuity created by the act of Congress of March 2, 1919, in favor of the Northern Minnesota Ore Company only.

3. The trial court erred in signing and entering the decree appealed from in this case, in favor of the Cuyuna Mining and Investment Company, Assignee of James E. Gibbon, receiver for the Northern Minnesota Ore Company, and adverse to the Secretary of the Interior, because rights arising under the War Minerals Act of March 2, 1919, and its amendments, could not be assigned; and, further, because a proceeding authorized by the act of February 13, 1929, only could be instituted by a claimant who theretofore had filed a claim under the acts of Congress generally known as the War Minerals acts (R. 15).

ARGUMENT

I

The Supreme Court of the District of Columbia had no jurisdiction to hear and determine the suit instituted by the Cuyuna Mining and Investment Company under the act of February 13, 1929, because the plaintiff did not come within the purview of that act

The first question presented by the record is one of jurisdiction.

Equity cause No. 50418 was filed by the Cuyuna Mining and Investment Company under the alleged provisions of the act of February 13, 1929.

Prior to the passage of that act, the Supreme Court of the District of Columbia had no jurisdiction over the Secretary of the Interior with respect to controversies arising out of Section 5 of the act of March 2, 1919. This was definitely settled by the Supreme Court of the United States in its decisions in *Work v. United States ex rel. Rives* (267 U.S. 175), and *Work v. United States ex rel. Chestatee Pyrites and Chemical Corp.* (267 U.S. 185).

The act of February 13, 1929, conferred jurisdiction upon the Supreme Court of the District of Columbia over such controversies for the first time; but only to a limited extent.

It is hardly necessary to cite authority for the proposition that where jurisdiction is conferred upon a court by legislative enactment, in cases where no jurisdiction previously had existed, the jurisdiction so conferred is limited by the exact language of the act, and cannot be extended by judicial construction. Neither can it be invoked by any persons or corporations other than those whom the act recognizes as the proper parties plaintiff.

This point is illustrated by the case of *Usher v. West Jersey Railroad Company* (126 Pa. 206; 17 Atl. Rep. 597; 12 Am. St. Rep. 863; 4 Law Rep. Ann. 261).

In that case an action was instituted in Pennsylvania by the widow of a man who had been killed while a passenger on one of the defendant's trains

in New Jersey. The statute of New Jersey, which altered the rule of the common law, provided for suits in such cases, but only by the personal representative of the decedent. The Supreme Court of Pennsylvania, in deciding in favor of the defendant railroad Company, said:

The language of the New Jersey statute is that "every such action shall be brought by and in the names of the personal representatives of such deceased person." As this language is entirely clear, unqualified and peremptory, it would seem to settle the question without more.

* * * * *

The meaning of the language used is plain and unambiguous, and its directions mandatory. It is an established rule that statutory remedies are to be strictly pursued, and we have no right when the Legislature has commanded one form to say that another will serve the purpose equally well. The law-making power has settled the remedy as well as the right, and courts are not authorized to vary or depart from either.

In this instance, Congress, by the act of February 13, 1929, pursuant to which the Cuyuna Mining and Investment Company instituted Equity Suit No. 50418, only gave to "any claimant" who previously had filed a claim under the War Minerals acts, the right to institute a proceeding in the Supreme Court of the District of Columbia "to review the final decision of the Secretary of the Interior

upon any question of law which had arisen * * * in the adjustment, liquidation, and payment of his claim under said acts."

It is conceded that the Cuyuna Mining and Investment Company did not file War Minerals Claim No. 1077, nor any other claim under the War Minerals act. That being the case, the Supreme Court of the District of Columbia had no jurisdiction to hear and determine this cause, as its jurisdiction under the 1929 act was limited to suits by War Minerals claimants, with respect to their own claims. Indeed, when the transfer was made by the Northern Minnesota Ore Company to the Cuyuna Mining and Investment Company, there was no right of action or claim then existing, and if one were created by subsequent act it did not pass to the Cuyuna Company, and was not purchased by it, under a sale made prior to the creation of the right of action. The Cuyuna Company bought only what was in existence when it consummated its purchase. The judgment appealed from, therefore, should be reversed.

II

The War Minerals act of March 2, 1919, provided for a gratuity, but it did not create a legal right. A Congressional gratuity cannot be assigned nor can it be made the subject of a suit by a third person

The Secretary's contention on the merits primarily is based upon two statements of law announced by the Supreme Court of the United States in two leading cases.

The first of these is that Section 5 of the act of March 2, 1919, created no debt on the part of the Government, nor any contractual relation between a War Minerals claimant and the Government, but that it only conferred a gratuity upon such claimants under that act as were found by the Secretary of the Interior to be equitably entitled to receive it.

This statement of the law is announced in the case of *Work v. United States, ex rel. Rives* (267 U.S. 175).

The second principle is that a right to a gratuity conferred by an act of Congress is personal to the person or persons designated by the act. Such right cannot be transferred either by act of the parties or by operation of law. It does not descend, it cannot be assigned, nor can it be taken under judicial process and transferred to another person by an order of court.

This statement of the law is announced in the case of *Heirs of Emerson v. Hall* (13 Pet. 409, 413, 38 U.S. 409, 413).

The Supreme Court said, in *Work v. Rives*, with reference to the right conferred by the act of March 2, 1919:

The above summary of section 5 (act of March 2, 1919) clearly shows that Congress was seeking to save the beneficiary from loss which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and

moral considerations. Congress did not wish to create a legal claim. It was not dealing with vested rights.

The amendatory act of February 13, 1929, under which the appellee instituted suit in the lower court, related merely to adjective law and it in no way altered the nature of the right conferred by the 1919 act. If there could be any doubt on this subject, it would be removed by the decision of this court in *Marshall v. Wilbur* (60 App.D.C. 59, 60), which was decided after the passage of the act of February 13, 1929, and which continued to designate a right under the act of March 2, 1919, as a "Congressional gratuity."

The case of *Heirs of Emerson v. Hall, supra*, established the principle that a gratuity, which was granted through the generosity of the Federal Government, cannot be assigned. The court said in part:

A claim having no foundation in law, but dependent entirely on the generosity of the Government, constitutes no basis for the action of any legal principle. It cannot be assigned. It does not go to the administrator as assets. It does not descend to the heir.

This case also establishes the principle that a right, created by Congress for the express benefit of one person, cannot be exercised by a different person.

In order for the Cuyuna Mining and Investment Company to maintain the suit instituted by it, it

was necessary for it to show that the substantive right upon which the suit was based was one which could be passed by assignment.

When *Work v. Rives* and *Heirs of Emerson v. Hall* are read together, they show that this right was not assignable.

See, also, *Blagge v. Blach*, 162 U.S. 439.

III

It was optional with a War Minerals claimant to file or not to file a proceeding under the act of February 13, 1929. If no such proceeding were filed by a claimant, the question whether the Secretary's rulings upon the points of law which the claim involved were right or wrong became a moot question

It was the Northern Minnesota Ore Company which filed claim No. 1077 with the Secretary of the Interior, and not the Cuyuna Mining and Investment Company.

It is admitted by the appellee that two awards totaling \$106,717.82 were made to the claimant, and that the amounts of those awards were paid to the claimant more than four years before the receivership proceeding was instituted against it by Mraz (R. 2, 3). There is nothing in the record to show that the Northern Minnesota Ore Company, at the time Mraz instituted suit against it, was dissatisfied with the Secretary's awards, or that it had not previously received and accepted the payment of their amounts in full satisfaction of its claim. These payments effected a final settlement of War

Minerals Claim No. 1077. Certainly there is no presumption to the contrary, nor is there any presumption that the Secretary erred in his decision of the questions of law which arose in the adjustment, liquidation, and payment of the claim, and which were acquiesced in by the claimant.

The corporate existence of the Northern Minnesota Ore Company was not terminated by the appointment of a receiver for its assets in 1927. If it was dissatisfied with the Secretary's rulings and with his adjustment of its claim, it thereafter acquired the right to file a proceeding under the act of February 13, 1929; but it did not institute such a proceeding.

The object of the 1929 act was not to stir up litigation, or to open for review the Secretary's determination of questions of law which were acquiesced in by War Minerals claimants.

In the instant case the claimant, Northern Minnesota Ore Company, not only had acquiesced in the Secretary's ruling upon the points of law which its claim involved, but it had received and accepted payment of his final award without further question. That being the case, the law gave a third person, the Cuyuna Mining and Investment Company, no right to express dissatisfaction with the Secretary's rulings, which were satisfactory to the claimant, or to test their correctness through a proceeding under the 1929 act. In this regard it acquired nothing from the receiver of the Northern Minnesota Ore Company.

It should be remembered that James E. Gibbon, as receiver of the Northern Minnesota Ore Company, acquired nothing except its assets. The right to file a proceeding under the act of February 13, 1929, asking a review of the decision of the Secretary of the Interior upon questions of law, was not an asset. It did not then exist. It merely was a personal privilege of the Northern Minnesota Ore Company, which it could exercise or not at its option. The receiver could transfer nothing to the Cuyuna Mining and Investment Company which he himself had not acquired as an asset of the Northern Minnesota Ore Company. As the right to file a proceeding under the act of February 13, 1929, was not an asset of that company, either tangible or intangible, the Cuyuna Mining and Investment Company never succeeded to that right through the purchase of assets at the receiver's sale.

The right to file such a proceeding had not been granted by Congress at the time of the receiver's sale, and such right, not then in existence was not transferred. It is impossible to understand how the receiver could transfer a non-existing right of action through a judicial sale.

It also should be remembered that the act of February 13, 1929, was adjective law only, and that it conferred no new substantive rights.

All that the 1929 act provided for was a review of the final decision of the Secretary of the Interior upon questions of law which had arisen in the ad-

justment, liquidation and payment of a War Minerals claim; provided that such a review was asked for by the claimant. The act did not pretend to interfere with the settlement of War Minerals claims, or to reopen claims which already had been adjusted and paid to the satisfaction of the claimants.

If War Minerals Claim No. 1077 were finally adjusted to the satisfaction of the Northern Minnesota Ore Company through the total payments of \$106,717.82 which were made to it (and we must assume that it was so adjusted in default of any showing to the contrary), the rulings which the Secretary made upon the questions of law involved in his adjustment of the claim no longer are important. Whether the Secretary's rulings were right or wrong now is a moot question.

IV

The reasons given by the trial court for sustaining the Cuyuna Mining and Investment Company's right of action in this case

In his memorandum opinion herein (R. 11), the trial court said:

As a defense to the petition, the Secretary in his answer sets out that the conveyance by the receiver of the Northern Minnesota Ore Company did not invest the plaintiff with any power or right to maintain suit against the Secretary of the Interior to review his decision in rejecting items of the claim which

had been filed by the Northern Minnesota Ore Company.

The act of February 13, 1929, confers upon
 “any claimant who has heretofore filed
 with the Secretary of the Interior
 * * * a claim under said Acts gen-
 erally known as the War Minerals Act”

the right to

“petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts.”

The Secretary contends that this right is personal to the original claimant, and is not assignable by operation of law or otherwise, so as to enable any person other than the claimant to petition for such relief.

The question thus presented is resolved in favor of the right of the plaintiff to maintain this suit, on the authority of *Erwin v. U.S.*, 97 U.S. 392; *Western Pacific Railroad Co. v. U.S.*, 268 U.S. 271; and *U.S. ex rel. Parish v. Cortelyou*, 30 App.D.C. 45, 54. See also memoranda in *Baker v. Wilbur*, equity no. 50,764, and *Maltby v. Wilbur*, equity no. 51,025.

The reported cases cited by the court have been examined, and are found to involve the following facts:

In *Erwin v. U.S.*, 283 bales of cotton, which were private property, were seized by the Federal Forces at Savannah, Georgia, in February, 1865. The cotton was then sold and the proceeds of the sale were paid into the Treasury of the United States. The litigation which resulted grew out of this state of facts, and out of an act of Congress which conferred jurisdiction upon the Court of Claims to hear and determine the question involved and out of certain bankruptcy proceedings.

In the *Erwin case* the United States actually held the proceeds of the property of one of its citizens, who formerly had been a belligerent, but whose civil rights had been restored by amnesty. There was no element of gratuity in this case. Congress merely restored under conditions of peace property which it had taken under conditions of war.

In *Western Pacific Railroad Co. v. U.S.*, the Western Pacific Railway Company had received only land-grant rates for the transportation as passengers of discharged and retired soldiers, and discharged military prisoners. The Railway Company claimed that it was entitled to full tariff rates for the transportation. Thereafter, the assets of the Railway Company were sold by a receiver, and transferred by a special master's deed to the Western Pacific Railroad Company. It was held that the claim for additional compensation was an asset of the Railway Company which passed to the Railroad Company through a judicial sale pursuant to a decree of court.

United States ex rel. Parish v. Cortelyou involved money earned under a contract with the United States to supply ice, which had been performed by the claimant to the extent permitted by the agents of the Government.

The *Erwin case* involved tangible property actually taken and thereafter sold by the United States, which retained the proceeds; the *Western Pacific case* involved transportation actually furnished under a contract with the United States; while the *Parish case* involved ice actually provided for the use of the United States pursuant to contract.

None of these cases involved a gratuity.

The memoranda in *Baker v. Wilbur* and *Maltby v. Wilbur* were Justice Cox's own opinions in other War Minerals cases.

The instant case involves no property, tangible or intangible, and it involves no contract right. It, therefore, is impossible to understand in what way it is controlled by the decisions cited by the trial court, which have no reference to gratuities, but relate only to vested legal rights which were capable of assignment.

CONCLUSION

While the appellant insists upon all of the matters of defense urged in the foregoing paragraphs of this brief, the question of greatest public concern presented for the determination of the court in this case is the assignability of the right to claim

the award provided for in Section 5 of the act of March 2, 1919.

The question of assignability has arisen in a number of suits instituted under the act of February 13, 1929. It has arisen in cases of assignment of right by claimants. It has arisen in cases where the War Minerals claimant died before a suit was instituted under the act of February 13, 1929, and in cases where the claimant instituted such a suit, but died before it was brought to hearing. In these classes of cases the widows, next of kin, or personal representatives have asserted the right to institute suit in the place of the deceased claimant, or else have attempted to revive and continue such suits where they were instituted by the claimant during his lifetime.

The various Secretaries of the Interior always have maintained that the right created by the act of March 2, 1919, being a gratuity, was not capable of assignment either by act of the parties, through death, or by decree of court.

They have always maintained that the right to a gratuity died with the claimant, and that, therefore, suits under the act of February 13, 1929, instituted by a claimant, abated with his death and could not be revived, because the substantive right upon which the suit was founded had ceased to exist.

These cases all have depended upon the question: Is a right under the act of March 2, 1919, assignable? This question never has been presented to

this court for answer, and it involves a very large amount of public money in the aggregate.

A broad decision of the question by this court, would be desirable. This, however, is submitted merely as a suggestion for the consideration of the court.

Respectfully submitted.

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VICTOR H. WALLACE,
Attorney.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

SEP 16 1933

No. 5982 *Henry H. Sledge*

CLERK

IN THE
Court of Appeals of the District of Columbia

APRIL TERM, 1933

HAROLD L. ICKES, Secretary of the Interior,
Appellant,

vs.

CUYUNA MINING AND INVESTMENT COMPANY,
A Corporation, Assignee of James E. Gibbon, Receiver
for the Northern Minnesota Ore Company, a
Corporation, *Appellee*

BRIEF OF APPELLEE

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Attorneys.

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BRIEF OF APPELLEE

Correction to Appellant's Statement of the Case

Appellee desires to note a correction to appellant's statement of the case in that part contained at the top of page 4 of appellant's brief:

At the time the bill of sale from the receiver was

made on December 28, 1928, there was pending before the Secretary of the Interior the War Minerals Relief Claim No. 1077 of Northern Minnesota Ore Co. This claim had been pending since it was first filed in the year 1919, and by the terms of the War Minerals Relief Act it continued to be pending until the Secretary of the Interior had performed and completed the duties provided and imposed by said Act. At the time of said bill of sale on December 28, 1928, the Secretary had not fully performed and completed the duties imposed on him by said Act because he had not considered for allowance the items of loss which have been held to be a subject of consideration for allowance by the lower court in the opinion of Justice Cox herein.

Appellant in his assignment of errors and supporting argument does not question that the Secretary failed to complete the duties imposed on him by said Act in that he failed to consider for allowance the items of loss that the lower court, pursuant to decisions of this court and of the Supreme Court, ruled that he should have considered.

Appellant's assignments of error will be considered in the order presented.

The first point urged by appellant and relating to the jurisdiction of the lower court requires little separate consideration. It will be later clearly shown that the War Minerals Relief Claim No. 1077 of the Northern Minnesota Ore Co. involved in the present suit was assignable by operation of law and was actually so assigned, and with this fact established it necessarily follows that appellee stands in the place and

stead of the original claimant, Northern Minnesota Ore Co., for all necessary purposes in prosecuting the present suit and establishing its rights under said War Minerals Relief Claim No. 1077 (2 Ruling Case Law, see Chap. V, Secs. 46 and 47, pp. 636-637).

I

Congress Intended That the Benefits of the War Minerals Relief Acts Should Extend to Assignees

The case of *Usher v. West Jersey Railroad Co.* cited by appellant is, of course, not in point at all because there the New Jersey statute specifically limited the right of action to the "personal representatives of such deceased person," and further specified that the recovery "shall be for the exclusive benefit of the widow and next to kin." There was no such limitation in the Act of March 2, 1919 (40 Stat., 1272), on which said claim No. 1077 was based, or in the amendatory Act of February 13, 1929, but on the other hand it clearly appears from the language of these Acts that Congress intended that the word claimant include the executors, administrators, heirs and assigns of such claimant, and recognized that claims might be prosecuted and collected by an assignee who became such by operation of law. In proof of this attention is invited to the fourth proviso of said Act which reads:

"And provided further, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress, hereafter duly appointed, from the right of review of such settle-

ment, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party."

It is unthinkable and unconscionable that the Government should hold executors and assigns of claimants responsible for wrongful and fraudulent payments if it were intended that they should be barred from receiving awards provided for in said Act, as contended by appellant. In other words, by extending the right of recovery on the part of the Government "to executors * * * and assigns," Congress certainly intended to make them privy to, and potential beneficiaries of the award and not strangers to and wholly divorced from the award and its beneficiary. This viewpoint has heretofore been recognized by the different Secretaries of the Interior, and at all times and until the present time the Secretary, in the administration of said Act, has always insisted that in cases where claimants had not paid obligations incurred prior to November 12, 1919, that such obligations be recognized as lawfully owed, and the awards were made only with the understanding that the debts to the creditors would be paid. In support of this attention is invited to Senate Document No. 224, 70th Congress, Second Session, entitled "Administration of War Minerals Relief Act." In this document at pages 35 and 36 will be found an opinion by the attorney for the Secretary of the Interior holding War Minerals Claims transferable by operation of law, and following this an endorsement of the position of such attorney by Secretary Lane under date of January 15, 1920. This letter by Secretary Lane concludes:

“Under the law, the award and payment thereof is made to the claimant or his legal representative.”

This court has upheld the assignability by operation of law of a War Minerals Relief claim in a case where this point was not contested by the Secretary of the Interior. See *McCarl v. Halstead* (59 App. D. C. 395). This was a case involving a claim and an award made under the same War Minerals Relief Act, and the Court upheld the right of Halstead, receiver of the Court of Common Pleas No. 4, Philadelphia County, Pennsylvania, to bring a mandamus action compelling the Comptroller General to pay said award to him.

The Secretary of the Interior has also made awards to executors and assignees in numerous cases, among which are the following:

Baker v. Wilbur, claim No. 497. (Equity No. 50764.)

Pearson v. Wilbur, claim No. 715. (Equity No. 50052.)

Kathryn G. McLaughlin, Executrix, claim No. 44. (Law No. 77717.)

R. H. Farmer and C. H. Walsh, claim No. 1009. (Law No. 77745).

John Madrid, claim No. 408.

William H. French, Receiver of Noble Electric Steel Co., claim No. 697.

See also on this point *Western Pacific Railroad Co. v. United States* (268 U. S. 271), where at page 275 the Supreme Court of the United States specifically upheld the right of a receiver of a state court to transfer a claim, similar to that here at issue, to a purchaser for value.

II

War Minerals Relief Claim No. 1077 Was Pending and Undisposed of at the Time of the Bill of Sale to Appellee; It Was An Asset Transferable and Actually Transferred to Appellee by Direction of the Court

While appellee did not itself originally file War Minerals Relief Claim No. 1077, it became the owner of said claim along with all other property and assets of Northern Minnesota Ore Co. by bill of sale of the receiver and upon payment of the very substantial sum of \$161,703.61. (Transcript, bottom of page 16 and top of page 17.) This sale and payment was, of course, for the benefit of the creditors who had previously advanced money for the mining operations of Northern Minnesota Ore Co. It is to be noted that this War Minerals Relief Claim No. 1077, which was originally filed in the year 1919, was, under the terms of the War Minerals Relief Act, a continuing claim against the Government until it should have been fully and completely adjudicated, with the allowance of all allowable items by the Secretary of the Interior. The pertinent portion of the War Minerals Relief Act appearing just before the first proviso reads as follows:

“—that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed:”

Certain items of loss, which have been continuously pending since the claim was filed in 1919 and disallowed by the Secretary (Record, top of page 10), have

been ruled to be subject to consideration for allowance. (See opinion of Justice Cox, Rec. p. 11.)

In decisions by this court, which have been affirmed by the Supreme Court of the United States, it has been held that the Secretary of the Interior erred in that he had not hitherto taken into consideration and made awards for certain allowable items of loss suffered by claimants. Items of loss claimed in the instant case fall within these classes. *U. S. ex rel. Vindicator Consolidated Gold Mining Co. v. Wilbur* (284 U. S. 231) and *U. S. ex rel. Chestatee Pyrites & Chemical Corp. v. Wilbur* (288 U. S. 97) and *Ickes, Secretary of the Interior v. The United States ex rel. Chestatee Pyrites & Chemical Corp.* (289 U. S. 510). Said claim No. 1077 was, therefore, an existing entity and an asset in the nature of a chose in action of the Northern Minnesota Ore Co. which was on December 28, 1928, duly transferred and assigned to appellee as set forth.

III

Authorities Do Not Support Appellant's Position

Appellant argues to the court that the claim in suit was not assignable because a gratuity, and in support thereof cites the cases of *Heirs of Emerson v. Hall* and *Work v. Rives*. In the *Emerson v. Hall* case the court held that since the Act was entitled "For the Relief of the Heirs of Emerson" that the award was thus limited and could only be paid to his heirs as distinguished from his legal representatives. It is to be noted that in this case there was no question of assignment by operation of law involved, since the award was directly to heirs of Emerson, but only a question of the

interpretation of the Act. See also discussion of this case in *Price v. Forrest* (173 U. S. 410 at page 427).

In the *Work v. Rives* case it is to be noted that the language quoted by appellant was merely dicta; further, the court did not declare War Minerals Relief awards to be pure gratuities, but states that they were "based on equitable and moral considerations," i.e., that they were equitable claims, and there was no suggestion that they were not assignable by operation of law. It is to be noted that in the very cases cited by the court in support of this dicta in *Work v. Rives* (267 U. S. 181) the class of claims under consideration, i.e., Sugar Bounty claims, was held to be assignable. See especially the case of *Allen v. Smith* (173 U. S. 389-400), there cited by Justice Taft, which held that a claim for sugar bounty to be paid by the United States was assignable.

IV

Authorities Clearly Establish Assignability of Claim by Operation of Law and the Right to Prosecute by Assignee

The Supreme Court of the United States has, in a large number of cases in all substantial respects similar and parallel to the instant case, held that claims against the United States based on moral and equitable obligations were assignable. In the case of *Williams v. Heard* (140 U. S. 529), the court, referring to awards under the so-called "Alabama Claims," used language at page 538 which applies precisely to the character of the claim here under consideration. The court here said:

“But no individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund awarded, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund. * * * There was, undoubtedly, a moral obligation on the United States to bestow the fund received upon the individuals who had suffered losses at the hands of Confederate cruisers; and in this sense all the claims of whatsoever nature were possessed of greater or less pecuniary value. There was at least a possibility of their payment by Congress—an expectancy of interest in the fund, that is, a possibility coupled with an interest.”

Concerning the assignability by operation of law of claims of this kind, the court further said at page 540:

“Who can doubt but that the right to prosecute this claim before the Court of Commissioners of Alabama Claims would have survived to their legal representatives had the original claimants been dead at the passage of the Act of 1822? If so, the money recovered would have been distributable as assets of the estate.”

It is to be noted that in this case the bankruptcy of the Heard, plaintiffs took place in 1875 with the assignments in bankruptcy in 1877, while the Act of Congress under which the award was made was not passed until 1882. Thus the claim of the Heard was not pending in the legally recognized sense until some five years after the assignments in bankruptcy—yet it was held to have passed by such assignments.

See also *Milnor et al. v. Metz* (41 U. S. 220), where at page 223 it appears that an assignment of assets in insolvency was made January 11, 1839, while the Act

of Congress making the award was not passed until May 2, 1840, yet the court held that the assignment reached and included the award.

Appellant seeks to distinguish the cases referred to by the lower court by pointing out the antecedent history of the claim in each case cited. He does not, however, controvert the broad principle running through all these cases that in each of them there was no legal obligation or valid enforceable claim against the Government, and that in each case the award made to the claimant was solely in recognition of an equitable and moral obligation of the United States to the claimant, precisely as in the instant case where claimants invested and lost their money at the request and demand of the Government to produce certain designated minerals necessary for the successful conduct of the war.

The case of *Erwin v. United States* was based on The Captured and Abandoned Property Act which granted recognition to claims depending wholly on a moral and equitable obligation; the claimant, Erwin, however, had lost his right by lapse of time to make such claim, and he was only enabled to present it because of the waiver of the Statute of Limitations by special Act of Congress (19 Stat. 509)—thus removing his claim a further step from any legal right to make the same. | *Erwin v. U. S.* (97 U. S. 392).

Attention is further invited to the case of *Price v. Forrest* (173 U. S. 410). In this case an Act of Congress directed the Secretary of the Treasury to adjust the account of Price "on principles of equity and justice." In this case there was no semblance of any legal obligation on the part of the Government, and

the award made pursuant to said Act was based purely and solely on moral and equitable considerations. The court held that this award passed to the receiver appointed by the state court. To the same effect is *Phelps v. McDonald* (99 U. S. 298). In this case the claim and award was allowed by a commission under a treaty between the United States and Great Britain and had as its basis the destruction of certain cotton belonging to claimant by the army of the United States during the Civil War—this being also a claim depending solely upon moral and equitable considerations—similarly to those arising under the War Minerals Relief Acts. The court held that this claim passed to the assignee in bankruptcy and in considering the contention that the claim was repurchased would be good except for the fraudulent and deceptive acts of McDonald.

Also *Clark v. Clark* (58 U. S. 315). The claim in this case was one against Mexico which was settled under a treaty between the United States and Mexico, the claim being for the unlawful seizure of the cargo of a certain vessel. The court held that this claim, while pending, passed to the assignee in bankruptcy; the attempt of the bankrupt to get back the title to the claim from the assignee through a purchase by his sister was held fraudulent, but the decision implies that except for this factor such repurchase would have been good.

V

The rule which has been developed in the foregoing decisions of the Supreme Court has since been stated with particular succinctness and clarity by this court in the case of *U. S. ex rel. Parish v. Cortelyou* (30 App. D. C. 45) as follows:

“Where an Act of Congress creates or recognizes the right of a party to the payment of money by the United States without negating its succession in case of his death, and makes an appropriation therefor, the right to enforce the demand, if it is enforceable at all, against an executive officer of the Government by mandamus, survives and passes to the personal representatives of such party.”

Since War Minerals Claim No. 1077 was a pending and potentially valid claim against the United States, based on an equitable and moral obligation of the United States to claimant at the time the assignment and transfer by the receiver was made to appellee on December 28, 1928, it is submitted that appellee thereby became vested with the entire right, title and interest to said claim, and to the right to institute and prosecute any necessary proceedings to obtain a collection thereof from the United States, and thus became entitled to prosecute its suit in Equity 50418 and the present appeal.

Respectfully submitted,

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